IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 2214 of 2001()

AA.66/1999 of A.A.(LAND REFORMS),TRIVANDRUM
SM.7/1992 of LAND TRIBUNAL, TRIVANDRUM

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REVN. PETITIONER/RESPONDENT/APPLICANT:

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1. KUMARAN DAMODARAN,
MANKUNNIL VEEDU, MULLANKAD, VETTINADU,
VEMBAYAM, NEDUMANGAD. (DIED)

***ADDL. PETITIONERS 2 TO 6 IMPLEADED**

2. DRAUPADI, WIFE OF DAMODARAN,
MANKUNNIL VEEDU, MULLANKAD, VETTINADU,
VEMBAYAM, NEDUMANGAD.

3. D. RADHAMONI, D/O.DAMODARAN,
MANKUNNIL VEEDU, MULLANKAD, VETTINADU,
VEMBAYAM, NEDUMANGAD.

4. D.MOHANAN, S/O.DAMODARAN,
MANKUNNIL VEEDU, MULLANKAD, VETTINADU,
VEMBAYAM, NEDUMANGAD.

5. D.SATHIKUMARI, D/O.DAMODARAN, MANKUNNIL VEEDU,
MULLANKAD, VETTINADU, VEMBAYAM, NEDUMANGAD.

6. R.RAMANI, D/O.DAMODARAN,
MANKUNNIL VEEDU, MULLANKAD,
VETTINADU, VEMBAYAM, NEDUMANGAD.

*ADDL. PETITIONERS 2 TO 6 ARE IMPLEADED AS PER THE ORDER DATED 31.7.2002 IN CMP NO.3430 OF 2002.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT/APPELLANT/RESPONDENT & STATE:
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1. RAJAMMA,
   POTTIVILAKATHU VEEDU, KARIKKAKOM,
   THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
   CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.R.S.KALKURA
R2 BY GOVT. PLEADER MR.SHYSON P.MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO.4759 OF 2001 IN C.R.P.NO.2214 OF 2001

DISMISSED

18.7.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P. No. 2214 OF 2001

Dated this the 18th day of July, 2007

O R D E R

In this Revision Petition under Section 103 of the Kerala Land Reforms Act the applicant in a suo motu proceedings initiated pursuant to an application under Section 72 B of the Act challenges the order of the Land Reforms Appellate Authority setting aside the order of the Land Tribunal and allowing the appeal holding that the petitioner is not a lessee in possession entitled to assignment under Section 72 F. The suo motu proceedings were initiated by the Land Tribunal on the basis of an application which had been filed by the petitioner under Section 72B in respect of two acres of land in survey No.1407/1 of Vembayam Village. The petitioner's case is that out of the two acres of land, 1.88 acres is in his possession and enjoyment since 1955 as per an oral lease granted by the land owner and title holder one Padmanabhan Krishnan. According to him, he has constructed a thatched shed on the property apart from making other valuable improvements. He claims to be residential occupation of the building situated on the property. Adjacent to the above property, there is another item of property having an extent of two acres and those two acres account for the source of livelihood for the petitioner and his family. It is stated that the brother-in-

law of the petitioner is also possessing another two acres of land of which also the land owner was Padmanabhan Krishnan. Smt.Rajamma, the 1st respondent in the C.R.P. is the petitioner's sister's daughter and she was arrayed as the 2nd respondent before the Land Tribunal and she preferred appeal before the Land Reforms Appellate Authority. The Land Tribnal on the basis of Ext.C1 report received from the authorised officer found that the petitioner is in possession and enjoyment of the property, paying basic tax for the land and property tax for the building for so many years. The Tribunal placed strong reliance on the recitals in sale deed No.4295/68 of the Nedumangad Sub Registry executed in favour of the petitioner and his brother-in-law Sivarajan by late Padmanabhan Krishnan his brother and the 1st respondent, daughter of late Kunjulekshmi and held that those recitals were binding on the respondent she being a party to that document. Accordingly, the Land Tribunal ordered assignment of jenmam rights in respect of the property in favour of the petitioner. The Appellate Authority however set aside the order of the Land Tribunal. The Appellate Authority noticed that the testimonies of the two witnesses who were examined on the side of the petitioner were contrary to the testimony of the petitioner. The non-examination of any witnesses belonging to the locality was viewed seriously by the Appellate Authority and finding that no cogent evidence

is produced by the petitioner to prove the lease arrangement, the Appellate Authority interfered with the order of the Land Tribunal.

2. I have heard the submissions of Mr.Pirappancode V.S.Sudheer, learned counsel for the additional petitioners who are the legal heirs of the deceased original petitioner who died during the pendency of the C.R.P. and those of Mr.R.S.Kalkura, counsel for the 1st respondent. I have also heard the learned Government Pleader on behalf of the 2nd respondent-State.

3. Mr.Sudheer, learned counsel for the petitioner would address me strenuously on the various grounds raised in the Civil Revision Petition. He submitted that the Land Reforms Appellate Authority which was expected to re-appreciate the evidence had not bothered even to have a glance through the evidences and in that way has failed to discharge its appellate functions. No reasons have been stated by the Land Reforms Appellate Authority as to why the findings of the Land Tribunal in its order in SM No.7 of 1992 were erroneous. A detailed argument note had been submitted to the Appellate Authority, which was not even adverted to by the Appellate Authority. Execution of sale document No.4295/1968 containing her signature had been admitted by the respondent. The contention of the petitioner that he had been in exclusive possession from 1955 onwards on the basis of an oral lease

paying rent stood corroborated and supported by the recital of the above document and also by the enquiry report of the authorised officer. It is overlooking all those documents that the Appellate Authority allowed the appeal. The credit of the petitioner was not at all shaken in spite of some rigorous cross examination. This aspect has not been considered by the Appellate Authority which has allowed the appeal by passing a non-speaking order. The documents relied on by the respondent were two tax receipts in the name of a dead person and a Will. The Will had not been proved in accordance with law. In as much as the genuineness and authenticity of the Will had not been established, the Appellate Authority was not justified in relying on the Will in question. The petitioner is a tenant as defined under Section 2(57) of the Kerala Land Reforms Act.

4. All the submissions of Sri.Sudheer were refuted by Sri.R.S.Kalkura. Having considered the rival submissions addressed at the Bar, I am of the view that the order of the Land Reforms Appellate Authority negativing the claims of the petitioner is unsatisfactory. As the final authority on facts the Appellate Authority was expected to re-appreciate the entire evidence available on record and to give specific reasons as to why the order of the Land Tribunal was liable to be interfered with. The petitioner's contention that the respondents'

defence based on a Will is liable to be repelled since the Will in question has not been proved as required by law, has not been properly considered by the Appellate Authority.

5. The result is that setting aside the order of the Land Reforms Appellate Authority, I remand SM No. 7/92 to the concerned Land Tribunal. The Land Tribunal will take fresh decision taking into account the entire evidence adduced by the parties. Both parties are permitted to adduce fresh evidence before the Land Tribunal. The petitioner's contention that respondents defence is based mainly on a Will and that the Will is not properly proved will be taken due note of by the Land Tribunal while taking fresh decision. It is needless to mention that any defence founded on a disputed Will is liable to be accepted only when the Will has been duly proved in accordance with the relevant provisions of Indian Evidence Act and the Succession Act.

Fresh decision as directed above will be taken by the Land Tribunal at its earliest and at any rate within six months of receiving copy of this order.

PIUS C. KURIAKOSE, JUDGE

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